

the views of the 9th Circuit Court and the American Civil Liberties Union. A majority of the Constitution subcommittee members filed the first amicus brief in the Supreme Court defending the pledge on its merits.

Many legal observers predict that the Supreme Court will reverse the 9th Circuit's decision. The same cannot be said, however, for protecting the flag itself.

The ability to protect the flag against physical desecration was not in doubt throughout most of American history. For example, in 1974, the Supreme Court held that "nothing prevents a legislature from defining with substantial specificity what constitutes forbidden treatment of United States flags."

Congress' power to protect the flag has also been supported by Chief Justices Earl Warren and William Rehnquist and Justices Byron White, Hugo Black, Abe Fortas, John Paul Stevens and Sandra Day O'Connor.

This power, however, was eviscerated in 1989 when the Supreme Court decided by a 5-4 majority that flag desecration constitutes speech protected by the First Amendment.

The flag deserves constitutional protection, and legal scholars agree that the Flag Protection Amendment is the only way to restore the law as it existed for most of our nation's history. That is why the Constitution subcommittee recently approved the amendment, and the full committee is scheduled to vote on it this month.

The First Amendment guarantees freedom of speech, and rightfully so. The requirement that constitutional amendments be approved by two-thirds of each chamber of Congress and three-fourths of the states guarantees that the liberties we hold dear will not be taken away just because the American people decide to take action to protect the U.S. flag against physical desecration.

The House has approved the Flag Protection Amendment five times in the past five Congresses—including just last year. All 50 state legislatures have approved resolutions asking Congress to give them the opportunity to vote on the amendment.

The last time that the amendment was brought to a vote on the Senate floor, in 2000, 63 senators voted in favor of it—just four votes shy of the necessary two-thirds. This year, the prospects for passage could be even better.

In times of national crisis and triumph alike, it is the U.S. flag that Americans look to with reverence. No other American symbol has been as universally honored.

In a time of war, it is even clearer that the flag plays a unique role in honoring the men and women of the military who died for the ideals that the flag represents.

If a soldier dies in defense of our nation, the United States gives the family a flag in honor of that service. To countless families, the flag is a treasured possession and a poignant memory of their loss.

There are many ways to express one's political views. But there is only one United States flag—and it deserves constitutional protection.

Mr. REID. Mr. President, if I could proceed, it is very appropriate that today—I do not know if the distinguished Chair knows this, being as busy as he has been all day—the Supreme Court upheld our being able to pledge allegiance to the flag. They did it on a procedural grounds, but I do not think it matters. We won.

Mr. WARNER. I thank the distinguished leader for advising the Senate of that. I had heard of that earlier today. I think it is most appropriate that our colleague from Texas has

acted. The Senate will act without any further delay.

I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 378) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 378

Whereas the United States flag is a unique symbol of the United States and its ideals;

Whereas millions of Americans instinctively look to the United States flag with reverence, in times of national crisis and triumph alike;

Whereas no other American symbol has been as universally honored as the United States flag;

Whereas the United States flag has always played a unique role in honoring the men and women of the Armed Forces who have died in defense of the United States;

Whereas to the countless families of loved ones who have died in defense of the United States, the United States flag is a treasured possession and a poignant memory of their loss;

Whereas the Second Continental Congress adopted the Stars and Stripes as the official flag of the United States on June 14, 1777;

Whereas Congress has designated June 14 as Flag Day (36 U.S.C. 110);

Whereas the Pledge of Allegiance is recited by millions of Americans who wish to demonstrate their loyalty and allegiance to the flag of the United States and to the republic for which it stands;

Whereas President Eisenhower signed into law the modern version of the Pledge of Allegiance on June 14, 1954 (Joint Resolution entitled "Joint Resolution to amend the pledge of allegiance to the flag of the United States of America", Public Law 83-396, approved June 14, 1954), making Flag Day, 2004, the 50th anniversary of the modern version of the Pledge of Allegiance;

Whereas a 3-judge panel of the United States Court of Appeals for the Ninth Circuit ruled in *Newdow v. United States Congress*, 328 F.3d 466 (9th Cir. 2002), that the words "under God" in the Pledge of Allegiance violate the establishment clause of the first amendment of the Constitution of the United States when recited voluntarily by students in public schools;

Whereas on June 14, 2004, the Supreme Court issued a decision, *Elk Grove Unified School District v. Newdow* (docket number 02-1624), that reversed the decision of the United States Court of Appeals for the Ninth Circuit in the *Newdow* case solely on procedural grounds, but that leaves unresolved whether the Supreme Court agrees with the decision of the United States Court of Appeals for the Ninth Circuit to strike down the Pledge of Allegiance as unconstitutional;

Whereas Congress, in 1954, believed that it was acting constitutionally when it revised the Pledge of Allegiance;

Whereas the Senate believes that the Pledge of Allegiance, as revised in 1954 and as recodified in 2002 (4 U.S.C. 4), is a fully constitutional expression of patriotism; and

Whereas the Senate has twice acted by unanimous consent to authorize the Senate Legal Counsel to defend the constitutionality of the Pledge of Allegiance in the Federal courts (Senate Resolution 134, 108th

Congress, agreed to May 8, 2003, and Senate Resolution 292, 107th Congress, agreed to June 26, 2002); Now, therefore, be it

Resolved, That the Senate—

(1) supports and reveres the United States flag and the Pledge of Allegiance;

(2) strongly disapproves of the decision by the 3-judge panel of the United States Court of Appeals for the Ninth Circuit in *Newdow v. United States Congress*; and

(3) hereby designates June 14, 2004, as "National Pledge of Allegiance to the Flag Day".

SMITHSONIAN ASTROPHYSICAL OBSERVATORY

Mr. WARNER. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of S. 2362 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2362) to authorize construction of the Smithsonian Astrophysical Observatory instrumentation support control building and associated site development on Kitt Peak, Arizona, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. WARNER. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements in relation to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2362) was read the third time and passed, as follows:

S. 2362

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SMITHSONIAN ASTROPHYSICAL OBSERVATORY INSTRUMENTATION SUPPORT FACILITY.

The Board of Regents of the Smithsonian Institution is authorized to develop the site for a Smithsonian Astrophysical Observatory instrumentation support control building, including the installation of necessary utilities and equipment housings, and to construct such building on the site, for the purpose of supporting the collaborative Very Energetic Radiation Imaging Telescope Array System (VERITAS) project on Kitt Peak near Tucson, Arizona.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act \$1,000,000 for fiscal year 2005.

APPOINTMENT OF COMMITTEE TO ESCORT HIS EXCELLENCY HAMID KARZAI, PRESIDENT OF THE TRANSITIONAL ISLAMIC STATE OF AFGHANISTAN

Mr. WARNER. Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee on the part of the Senate to join with a like committee on the part of the House of Representatives to escort His Excellency President Hamid Karzai into the House Chamber for the joint meeting tomorrow.